

AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2677

Introduced by Assembly Member ~~Torrico~~ Fuentes

February 19, 2010

~~An act to repeal and amend Section 2924 of the Civil Code, relating to mortgages. An act to amend Section 7287 of the Revenue and Taxation Code, relating to local taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2677, as amended, ~~Torrico~~ Fuentes. ~~Residential mortgage loans: foreclosure procedures. Local taxes: graffiti prevention.~~

Existing law authorizes a city, county, or city and county to levy a tax, as provided, on the sale at retail within its jurisdiction of aerosol paint containers, felt tip markers, as specified, and marking substances or instruments at the rate of no more than \$0.10 per aerosol paint container or container of other marking substance, and no more than \$0.05 per felt tip marker meeting specified requirements or other marking instrument. Existing law requires the State Board of Equalization to enforce and administer these provisions.

This bill would increase the amount of the tax authorized to be levied under these provisions to \$0.25 per aerosol paint container or felt tip marker meeting specified requirements, would revise the definition of an aerosol paint container, would delete the authorization for the levy of a tax for containers of other marking instruments and other marking substances, and would require that 50% of the revenues from the tax be allocated for the purpose of funding the arts within the city, county, or city and county. The bill would also require any jurisdiction implementing the tax to provide retailers of products subject to the tax

the option to store or display the products in an area continuously observable by employees, as specified, or in an area not accessible to the public without employee assistance.

~~Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law provides that, after not less than 3 months after the filing of the notice of default, the parties described above may give notice of sale, stating the time and place of the sale, as specified.~~

~~This bill would prohibit the mortgagee, trustee, beneficiary, or authorized agent from giving notice of sale if the mortgagee, trustee, beneficiary, or authorized agent is currently in negotiations to modify the existing loan. The bill also would repeal a duplicative provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 7287 of the Revenue and Taxation Code*
- 2 *is amended to read:*
- 3 7287. (a) The legislative body of any city ~~or, county, or city~~
- 4 and county, may levy a tax by an ordinance approved by two-thirds
- 5 of the electors voting on the measure, in addition to any other tax
- 6 authorized by this division, on the privilege of selling at retail
- 7 within its jurisdiction aerosol paint containers, ~~containers of any~~
- 8 ~~other marking substance, or felt tip markers which~~ *that* have a flat
- 9 or angled writing surface of one-half inch or greater, ~~or any other~~
- 10 ~~marking instruments~~, at the rate of no more than ~~ten~~ *twenty-five*
- 11 cents ~~(\$0.10)~~ *(\$0.25)* per aerosol paint container or ~~container of~~
- 12 ~~other marking substance, and no more than five cents (\$0.05) per~~
- 13 ~~felt tip marker or other marking instrument per felt tip marker,~~
- 14 ~~provided that 50 percent of the revenues from the tax are allocated~~
- 15 ~~for the purpose of funding the arts within the city, county, or city~~
- 16 ~~and county.~~
- 17 (b) (1) For purposes of this chapter, “aerosol paint container”
- 18 ~~means any aerosol container, regardless of the material from which~~
- 19 ~~it is made, which is adapted or made for the purpose of spraying~~
- 20 ~~paint capable of defacing property a pressurized coating product~~

1 containing pigments and resins that dispenses product ingredients
2 by means of a propellant, and is packaged in a disposable can for
3 hand-held application, or for use in specialized equipment for
4 ground traffic or ground marking applications. "Aerosol paint
5 container" does not include aerosol lubricants, mold releases,
6 automotive underbody coatings, electrical coatings, cleaners, belt
7 dressings, antistatic sprays, layout fluids and remover, adhesives,
8 maskants, rust converters, dyes, ink, leather preservatives, and
9 cleaners.

10 (e)

11 (2) For purposes of this chapter, "felt tip marker" means any
12 broad-tipped indelible marker or similar implement containing an
13 ink that is not ~~water-soluble~~ water soluble.

14 (c) The tax authorized by this chapter shall not be considered
15 for purposes of the combined rate limit established by Section
16 7251.1.

17 (d) For purposes of this chapter, ~~"marking substance" and~~
18 ~~"marking instrument" means any substance or instrument, other~~
19 ~~than aerosol paint containers and felt tip markers, which could be~~
20 ~~used to draw, spray, paint, or mark, including, but not limited to,~~
21 ~~shoe polish applicators. Any jurisdiction implementing the tax~~
22 ~~authorized by this chapter shall provide retailers of products~~
23 ~~subject to the tax the option to store or display those products in~~
24 ~~an area continuously observable, through direct visual observation~~
25 ~~or surveillance equipment, by employees of the retail establishment~~
26 ~~during the regular course of business, or in an area not accessible~~
27 ~~to the public without employee assistance.~~

28 SECTION 1. ~~Section 2924 of the Civil Code, as added by~~
29 ~~Section 8 of Chapter 4 of the Second Extraordinary Session of the~~
30 ~~Statutes of 2009, is repealed.~~

31 SEC. 2. ~~Section 2924 of the Civil Code, as added by Section~~
32 ~~8 of Chapter 5 of the Second Extraordinary Session of the Statutes~~
33 ~~of 2009, is amended to read:~~

34 2924. (a) Every transfer of an interest in property, other than
35 in trust, made only as a security for the performance of another
36 act, is to be deemed a mortgage, except when in the case of
37 personal property it is accompanied by actual change of possession,
38 in which case it is to be deemed a pledge. Where, by a mortgage
39 created after July 27, 1917, of any estate in real property, other
40 than an estate at will or for years, less than two, or in any transfer

1 in trust made after July 27, 1917, of a like estate to secure the
2 performance of an obligation, a power of sale is conferred upon
3 the mortgagee, trustee, or any other person, to be exercised after
4 a breach of the obligation for which that mortgage or transfer is a
5 security, the power shall not be exercised except where the
6 mortgage or transfer is made pursuant to an order, judgment, or
7 decree of a court of record, or to secure the payment of bonds or
8 other evidences of indebtedness authorized or permitted to be
9 issued by the Commissioner of Corporations, or is made by a public
10 utility subject to the provisions of the Public Utilities Act, until
11 all of the following apply:

12 (1) The trustee, mortgagee, or beneficiary, or any of their
13 authorized agents shall first file for record, in the office of the
14 recorder of each county wherein the mortgaged or trust property
15 or some part or parcel thereof is situated, a notice of default. That
16 notice of default shall include all of the following:

17 (A) A statement identifying the mortgage or deed of trust by
18 stating the name or names of the trustor or trustors and giving the
19 book and page, or instrument number, if applicable, where the
20 mortgage or deed of trust is recorded or a description of the
21 mortgaged or trust property.

22 (B) A statement that a breach of the obligation for which the
23 mortgage or transfer in trust is security has occurred.

24 (C) A statement setting forth the nature of each breach actually
25 known to the beneficiary and of his or her election to sell or cause
26 to be sold the property to satisfy that obligation and any other
27 obligation secured by the deed of trust or mortgage that is in
28 default.

29 (D) If the default is curable pursuant to Section 2924c, the
30 statement specified in paragraph (1) of subdivision (b) of Section
31 2924c.

32 (2) Not less than three months shall elapse from the filing of
33 the notice of default.

34 (3) After the lapse of the three months described in paragraph
35 (2), the mortgagee, trustee, or other person authorized to take the
36 sale shall give notice of sale, stating the time and place thereof, in
37 the manner and for a time not less than that set forth in Section
38 2924f. The mortgagee, trustee, beneficiary, or authorized agent
39 shall not give notice of sale if the mortgagee, trustee, beneficiary,

1 or authorized agent is currently in negotiations to modify the
2 existing loan.

3 (b) ~~In performing acts required by this article, the trustee shall~~
4 ~~incur no liability for any good faith error resulting from reliance~~
5 ~~on information provided in good faith by the beneficiary regarding~~
6 ~~the nature and the amount of the default under the secured~~
7 ~~obligation, deed of trust, or mortgage. In performing the acts~~
8 ~~required by this article, a trustee shall not be subject to Title 1.6c~~
9 ~~(commencing with Section 1788) of Part 4.~~

10 (c) ~~A recital in the deed executed pursuant to the power of sale~~
11 ~~of compliance with all requirements of law regarding the mailing~~
12 ~~of copies of notices or the publication of a copy of the notice of~~
13 ~~default or the personal delivery of the copy of the notice of default~~
14 ~~or the posting of copies of the notice of sale or the publication of~~
15 ~~a copy thereof shall constitute prima facie evidence of compliance~~
16 ~~with these requirements and conclusive evidence thereof in favor~~
17 ~~of bona fide purchasers and encumbrancers for value and without~~
18 ~~notice.~~

19 (d) ~~All of the following shall constitute privileged~~
20 ~~communications pursuant to Section 47:~~

21 (1) ~~The mailing, publication, and delivery of notices as required~~
22 ~~by this section.~~

23 (2) ~~Performance of the procedures set forth in this article.~~

24 (3) ~~Performance of the functions and procedures set forth in~~
25 ~~this article if those functions and procedures are necessary to carry~~
26 ~~out the duties described in Sections 729.040, 729.050, and 729.080~~
27 ~~of the Code of Civil Procedure.~~

28 (e) ~~There is a rebuttable presumption that the beneficiary~~
29 ~~actually knew of all unpaid loan payments on the obligation owed~~
30 ~~to the beneficiary and secured by the deed of trust or mortgage~~
31 ~~subject to the notice of default. However, the failure to include an~~
32 ~~actually known default shall not invalidate the notice of sale and~~
33 ~~the beneficiary shall not be precluded from asserting a claim to~~
34 ~~this omitted default or defaults in a separate notice of default.~~

35 (f) ~~This section shall become operative on January 1, 2011.~~